Labour Legislation Review Committee

Interim Report

November 1986

Alberta

TABLE OF CONTENTS

LETTER FROM THE CHAIRMAN i

LETTER FROM THE COMMITTEE ii

PREAMBLE 1

FEDERAL REPUBLIC OF GERMANY 3

UNITED KINGDOM 8

UNITED STATES 12

JAPAN 15

AUSTRALIA 20

NEW ZEALAND 25

CONCLUDING REMARKS 29

QUESTIONS 30

Alberta
LABOUR

Office of the Minister

420 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 403/427-3664

In the Speech from the Throne, on June 12, 1986 the Lieutenant Governor announced that:

> "A full review of Labour Legislation will be undertaken by my government and necessary amendments will be proposed to assure that the laws of the Province, for the present and for the future, will be responsive to the needs and aspirations of employers and employees."

On August 1, 1986 I announced in the Legislature that a Labour Legislation Review Committee consisting of representatives of unions, management and the general public was established. The Committee has been considering the principles and functions of our existing legislation as well as comparable legislation in other industrialized jurisdictions.

Prior to engaging in the Public Meetings which have been scheduled throughout the Province, the Committee has produced the attached Interim Report. This report does not contain any recommendations. The recommendations of the Committee will be outlined in the Final Report of the Committee scheduled for the end of January, 1987.

I encourage you to consider the industrial relations system in Alberta, review this Interim Report, and share with the Committee your thoughts and opinions on how the system can be improved.

Yours sincerely,

Ian C. Reid
Minister of Labour
Committee Chairman

Alberta
LABOUR

Office of the Minister

420 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 403/427-3664

This Interim Report summarizes the observations of the Committee in our review of the Industrial Relations systems of other industrialized jurisdictions. We have prepared this material to assist Albertans in their review of Labour Legislation.

Contained in the document are a series of questions that the Committee has developed which are reflective of our observations in other jurisdictions. These questions are not to be interpreted as possible recommendations. Your answers, however, will assist the Committee in considering further the particular concepts that are presented.

We encourage you to review this interim report and provide us with your comments. Your contributions will assist the Committee in submitting recommendations to the Government that are reflective of the needs of all Albertans.

Joe Berlando
Alberta Teachers Association

Budd Coutts
International Union of Operating Engineers

Wallace Daley
Rancher

Michael Day
City of Red Deer

Sheila Embury
Retired M.L.A.

Ric Forest
Forest Construction

Larry Kelly
International Brotherhood of Electrical Workers

Bernice Luce
Farmer

Murray Ross
Celanese Canada Inc.

PREAMBLE

Our industrial relations system must be flexible enough to cover in a fair and equitable manner the needs of all Albertans in very different workplaces. It must be seen to be even handed in the varying economic circumstances that may occur over the passage of time. It should not impede in any way the relationships between employer and employee whether organized or not. Indeed a prime purpose of the industrial relations system should be to enhance that relationship by encouraging the parties to behave with a commonality of interest.

The collective bargaining system in Alberta has, like all other systems, had its successes and its problems. It has functioned through the business cycles of the last decade and should now be reviewed so that we can look forward to the twenty-first century with stability in labour relations. Recognizing that it has been a number of years since our labour laws have been reviewed, it was decided that a thorough analysis be undertaken.

The Committee to review labour legislation was established on August 1, 1986 and consists of people from unions, management and the general public representing all segments of Alberta society.

Labour legislation impacts on every employee and employer in Alberta. The Labour Relations Act and the Employment Standards Act set the framework for the industrial relations system that operates in our Province. It is the Committee's objective to ensure that the labour relations system in Alberta is both fair and equitable to employees and employers.

We are at the threshold of the twenty-first century. To ensure that our standard of living is maintained we must continue to build on our strengths and marshal our resources to meet the challenges of an increasingly competitive world. We are dependent upon our ability to export; to find and develop new markets. We have a responsibility to ensure that these markets are supplied with goods that are reliable, delivered on time and are competitively priced. We must have an industrial relations system that meets the needs of Albertans and sets the framework in order that our industries can meet the demands of the marketplace, regionally, nationally and internationally.

The purpose of this interim report is to provide Albertans with a summary

of observations of the Committee on the workings of industrial relations systems of certain other industrialized jurisdictions. No recommendations are contained in this report. The recommendations of the Committee will be contained in the final report scheduled for release by the end of January, 1987.

This interim report has two major sections. The first contains a country by country summary of the industrial relations systems that the Committee studied. In each review, the Committee has outlined what it believes are the major elements of that country's industrial relations system. The second section contains a series of questions to which the Committee is seeking answers from Albertans.

FEDERAL REPUBLIC OF GERMANY

Fundamental to the structure and operation of the German labour relations system is a shared recognition of, and respect for, the roles of labour, management and government in achieving corporate and national goals. Each party accepts responsibility for playing a critical role, in the context of a free market environment. In particular, labour and management have accepted each other as equal partners essential to the success of the undertaking, and have agreed to work out their differences without outside intervention. Parties accept the onus to remain aware of their economic, social and political environment and continually assess the implication of changes for their relationship.

The most distinctive feature of the statutory framework is the system of works councils and co-determination. At plant level the Works Constitution Act of 1952, as amended in 1972, establishes voluntary employee-elected works councils with extensive rights to information and consultation. Works councils are directly involved in the determination of principles and procedures underlying maintenance of order and discipline, and are directly consulted regarding personnel planning, engagement and transfer of employees, technological change and plant alterations. They are involved in the development of additional social compensation plans to offset financial consequences to staff of any plant alteration. The Co-determination Act of 1976, which builds upon principles established in previous legislation, ensures that representation for employees is established at the supervisory board level in all companies having more than two thousand employees. These structures are creations of statutes designed to ensure representation of employees' interests in the enterprise. Union participation is a structured part of employee representation at the supervisory board level.

Trade unions are thus recognized in a much broader context than provided for in the statutory certification or registration procedures often found elsewhere. Through the system of co-determination and works councils trade unions have received recognition as an integral part of the socio-economic structure, and in return have acknowledged the discipline and uncertainty of a free market economy. This broadly based structure, in practice a one union - one industry system, also precludes, in general, any form of union recognition on a single employer basis. There is also no need for an

exclusive rights concept; there are no competing unions within sectors or firms.

Long term economic growth and stability are accepted as legitimate goals at both the national and enterprise levels. An extensive network of social programs ensures that individual employees do not bear the initial brunt of economic declines and adjustments. The high cost of these jointly supported programs is accepted as part of the social cost of doing business. Large organizations representing both parties ensure that commitments emerging from the bargaining table are thoroughly analysed. It would be very difficult, in this context, for any small group to sustain unusual demands or behaviour.

Trade unions are accepted as full partners in the economic arena, partly because they confine their activities to representing employees' long term interests in that sphere rather than more immediate political concerns. While not politically neutral, German trade unions do not directly affiliate with any political party.

Large German employers expect and prefer to deal with strong, effective trade unions represented by qualified individuals capable of making commitments which reflect the long term needs of both parties. Small employer or employee organizations with narrowly based interests are not considered effective.

Government has deliberately and carefully established a framework which maintains the balance of power in the longer term, and within which the parties recognize they must work. A combination of constitutional, statute and case law, and collective agreements arrived at by the parties provides this framework.

Of particular note is the consistent refusal of government to involve itself in specific disputes, or immediately correct what one party might perceive to be a shift in the balance of power. Even the lengthy and costly Metal Workers strike of 1984 did not provoke any direct government intervention at the time. The parties clearly understand that within the overall framework of national interest they are responsible for solving their own disputes through mutually agreed procedures.

Commitment of the parties to free collective bargaining, and in particular the government commitment to permit parties to work out their own relationship without third party intervention, is evident in many aspects of the system.

(i) The parties negotiate their own dispute resolution procedures and appoint and pay for their own mediators when they feel such expertise is needed.

(ii) Major trade unions have developed their own three part underpinning to bargaining demands, involving inflation protection, productivity gains and wealth redistribution.

(iii) Issues in dispute have recently changed significantly, raising some concerns about the capacity of collective bargaining to address these matters. The parties have been left to apply existing practices, develop new ones, and only as a last resort approach the state for assistance.

(iv) Union membership is voluntary and approximately 30% of employees are union members.

(v) Although redundancy and layoffs remain a concern, and some statutory intervention has occurred, the parties have been left to negotiate social plans that ensure that layoffs, retraining and other adjustments are undertaken in a socially acceptable manner.

(vi) There is no special legislation for public sector or essential service employees. It has been accepted that there will be no work stoppage in this sector.

(vii) There is no compulsory conciliation or arbitration - both functions are utilized only to the extent the parties wish.

(viii) While legislation does not address the use of replacement labour during disputes, it is a practice that has not occurred in Germany.

Both parties recognize that the results of their efforts must ensure the long term viability of the enterprise and the industry, and the jobs they provide.

Agreements are legally binding; thus meaningful commitments result from the process.

Bargaining takes place at several levels. Industry level collective agreements, applied nationally are negotiated first. Regional and plant level agreements affecting local needs and concerns are then developed: though these latter arrangements do not produce collective agreements in the legal sense, they do involve additional entitlements.

The German system facilitates a high level of employer-employee communication at all levels of the undertaking. Communication between rounds of bargaining is maintained through employee involvement at the Board level in larger undertakings, and through the day-to-day operation of works councils. Events, such as the negotiation of social plans in response to pending layoffs, also help to keep the parties in tune with each others needs and aspirations.

Both parties recognize ongoing communication in a stressful environment requires the commitment and dedication of skilled individuals. A great deal of time and effort is directed toward developing and maintaining the skill of personnel at all levels, and ensuring that fully qualified people are in critical positions. The greater long term good must be put above shorter term interests.

Government expends considerable resources to ensure that the parties have available the data necessary to make joint decisions which reflect the needs of their particular industry.

There is some evidence that the nature of the relationship is changing. Employer resistance to greater employee involvement in the decision making processes of the enterprise is stiffening. Employers are now questioning the capacity of unions to share the risk associated with ever greater involvement in management of the firm; the very nature of the relationship could be altered. The German labour market continues to absorb a great deal of change, and will soon face even further challenges as technological innovation moves further into the service and manufacturing industries. It is the balance of power between the parties that continues to provide the basis upon which these adjustments are worked out. Both must realistically assess and meet the needs of the other.

Participants indicate that as long as this highly centralized system continues to effectively address issues arising in the workplace, remains flexible enough to accommodate local and job-site needs, and provides opportunities for employees' input at these levels, commitment to it will continue. The system is now well established, with the practice of works councils arising after the First World War. The structure, based upon multi-level interaction between large stable organizations, has brought the parties to the point where they now recognize they are wholly interdependent. Achievement of their respective goals requires ongoing communication and cooperation.

UNITED KINGDOM

Britain has a longstanding and rich common law tradition governing the employer-employee relationship. In recognition of this, government legislation has generally been targetted at specific issues such as employment redundancy provisions and specific common law immunities for trade unions, with other aspects of the relationship left to the will of the parties. Scope of bargaining is otherwise broad and flexible.

It is important to note that trade unions, as organizations, have long held specified immunities from common law provisions which would otherwise have severely limited their growth and capacity to undertake industrial action. To remove these barriers, trade unions were exempted from those criminal and civil illegalities which could emerge from activities undertaken in furtherance of a trade dispute. In practical terms, these immunities ensured trade unions the freedom to organize, bargain and strike.

Legislative amendments by the current government have altered the scope and accessibility of these immunities. Trade union immunity in strike situations has been limited to those situations where a majority of union members, in accordance with clearly defined procedures, have voted in favour of taking strike action. Picketing an employer, other than the one with whom the dispute exists, has been removed from the immunities by narrowing the definition of trade dispute to that between workers and their own employer. These and other recent changes have been criticized by some as anti-labour and outside the British tradition of voluntarism.

More generally, several key longstanding elements of the existing framework reveal a continuing preference for voluntarism.

(i) There is no statutory recognition procedure for trade unions. A union may achieve employer recognition through voluntary employer action, a negotiated agreement with the employer, a mediated arrangement with the help of the Arbitration and Conciliation Advisory Service, or through industrial action.

(ii) Where recognition is achieved it does not activate a great deal of statutory entitlement. Ability to demand information from the employer in support of collective bargaining, consultation rights in

redundancy situations, and consultation prior to mergers and takeovers are significant rights achieved through recognition.

(iii) Collective agreements are not binding in law. Specific terms and conditions are enforceable by incorporation into individual contracts of employment which are, for the most part, understood rather than documented.

(iv) The British statutory framework makes no attempt to define or comprehensively address dispute resolution in essential services except for military and police. Work stoppages in critical services are addressed on an ad-hoc basis.

(v) There is no statutory restriction on the use of replacement labour in the event of strike or lockout. Although unusual in practice, recent activity in the printing industry indicates use of replacement workers remains a possibility.

(vi) Existing tax law makes it more advantageous to be a self-employed tradesman than an employee. A significant number of construction workers have chosen this option, raising some questions about the continuing relevance of collective agreements in that industry. There are no indications of pending government action. Should this occur the integrity of tax law, rather than the desire to intervene in the employer-employee relationship, will likely be the catalyst.

(vii) The decision to join or not to join a trade union is voluntary. However, pre and post-entry membership arrangements and payment of dues are often negotiated by the parties.

Labour relations policy at the collective level is a highly political issue in Great Britain. Both union and management organizations maintain direct links to political parties in anticipation of receiving favourable treatment from government. This politicization of labour relations is producing ever greater swings in policy when governments change. Both ideology and economic pragmatism are found at all levels of the industrial relations system; for example the legislation recently introduced to govern some aspects of the internal operations of the unions. Politicization, however, has not been the case in respect of policy governing individual rights. Statutes such as those governing individual entitlements to

non-discriminatory treatment and protection from unfair dismissal have remained consistent over time.

The right to strike is not specifically addressed in legislation. Since the substantive terms and conditions of the non-binding collective agreement are incorporated into the individual contract of employment, the more immediate consequences of job action must be considered by the individual. In addition, alterations in longstanding statutory immunities have raised the issue of longer term consequences to the trade union as an organization.

The government is only marginally involved in the actual dispute resolution process. Agreement continuation during a dispute is governed by the choice of the parties. In most cases terms and conditions are maintained while a new agreement is worked out. The options and capacities of the parties are far reaching. An exception is a strike vote. A strike mandate vote must be used within four weeks or a further strike mandate vote can and must be sought before strike action is taken.

Government funds the Arbitration and Conciliation Advisory Service (A.C.A.S.). This agency provides a variety of dispute resolution services to the parties on a purely voluntary basis. Through a network of regional offices, A.C.A.S. assists in any way it can by providing access to experienced mediators and arbitrators, including pendulum or final offer selection arbitration where both the parties so choose. Well regarded by most parties, A.C.A.S. is an institution strategically well placed in the British labour relations system.

The nature and extent of ongoing communication between the parties varies dramatically. Since agreements are not binding the parties have an incentive to remain aware of changing needs and expectations; to do otherwise raises the possibility of disruptive attempts at unilateral action by a disaffected party. With the help of A.C.A.S., or on their own initiative, parties are free to structure their own ongoing communications system.

There is a specific Trade Union Congress policy in respect of trade union mergers, and expressed support for amalgamation of appropriate units. A stronger resource base from which union initiatives might be taken in the face of perceived government and employer hostility is a major spur to

consolidation. There is a wide range of bargaining structures, from highly centralized in steel and coal, to very decentralized in construction.

New developments called "greenfield sites" could have some impact on trade union structures. Some employers moving into the country attempt to negotiate a one company-one union plant agreement encompassing all employees rather than several craft based unions.

The bargaining agent recognized by the employer is the one able to command the most support, either directly or through a council or coalition of unions. Collective agreements can contain procedural machinery that governs the relationship between the employer and a number of trade unions having members in a particular enterprise. These kinds of arrangements modify traditional craft based structures by creating larger on site bargaining entities.

Although a general labour standards code does not exist a number of mechanisms, in combination, provide some specific minima. Specific statutes govern unfair dismissal, discrimination in employment and procedural requirements surrounding layoffs and redundancies. Tripartite wage councils establish standards such as minimum wages, vacations, and general holidays, on a regional or industrial basis. Part-time workers and those under 21 are not covered by these standards and generally represent a group not fully protected.

The British system is distinguishable largely because it is not a broadly applied statutory system. A combination of longstanding common law, specific issue related statutes and mutual agreements govern the employer-employee relationship. Uncertainty and industrial disputes can and do result, but as well there exists the opportunity and freedom for the parties to develop and maintain effective communications and mutually acceptable dispute resolution mechanisms designed to meet their own needs.

UNITED STATES

Government involvement in the industrial relations system in the United States is comparable to that found in Canada. The general framework is established through legislation, with additional quasi-judicial and mediation services provided by the National Labour Relations Board, (N.L.R.B.) and the Federal Mediation and Conciliation Services respectively. Both federal and state governments have specifically addressed the rights of essential employees. Federal civil servants, for example, do not have the right to strike. The basic legislative framework found today has remained intact since 1935.

Division of powers between federal and state authorities has produced a combination of local and national standards. The nature of standards, in any given region, depends on the extent to which local and state authorities have chosen to augment the national standards.

The Canadian system is closely modelled on that found in the United States. A statutory certification process administered by a quasi-judicial board, based on the premise of majority rule, continues to be used to establish the exclusive bargaining authority of a trade union. Once certified, a union has access to those rights prescribed by law, including the right to compel the employer to bargain in good faith.

There is no clear pattern emerging under the National Labour Relations Act, in that wide ranging agreements covering many unions and employers in a single industry exist, as do single project and single plant agreements. There is a trend towards less national bargaining, particularly where the industry is affected by variations in regional economic activity.

Collective agreements are legally binding on the parties. Conduct of the parties is governed by case law pursuant to unfair labour practice and good faith bargaining doctrines, as established through the National Labour Relations Act.

Federal mediation and conciliation advisory services are available to assist, either on their own initiative or at the request of the parties. Collective agreements continue beyond their expiry date to the extent that the parties wish, or in accordance with the terms of the agreement.

The right to strike and lockout are protected by statute. Conditions precedent to work stoppage, such as proper notice to bargain or terminate agreement and limitations on scope and nature of industrial action are established through a combination of case and statute law.

Replacement labour can be and is used; there is no legal obligation to re-hire following a strike, although the situation is not as clear where a lockout exists.

Under the very decentralized system presently operating in the United States, it is difficult to identify particular practices in relation to ongoing dialogue. There is no legislative involvement. At the program level the Federal Mediation and Conciliation Services is involved in preventive mediation very much along the lines of Alberta's preventive mediation program. They also co-sponsor community based education programs in the labour relations field. The impact of this program seems limited given the size of the agency as against the size of the work force. It is likely the quality and extent of ongoing communication between bargaining sessions varies dramatically by industry location, and the strike lockout record of the negotiating parties.

There is no federal legislative involvement in the employee adjustment process. Where lay-offs and plant closures are taking place activity is at the local or enterprise levels. Long term needs have been recognized, such as pending shortage of skilled labour in the construction industry, yet there is no overall coherent response being developed either by the parties or within government.

The United States, like Canada, has seen a number of severe changes take place in the sphere of union management relations with construction unions taking the brunt of this change. The swing towards non-union construction has brought about a change in strategy within the AFL-CIO and the union movement generally. Today in the United States the unions appear to be adapting to this change which has been forced upon them by competitive pressures, the anti-union movement, right to work legislation, double breasting and a trend away from national agreements. As an example, the AFL-CIO has embarked on an extensive market recovery program. This same organization has made it known that they consider picketing for economic reasons a thing of the past and expressed a desire to work with employers in a co-operative mode for the overall good of the nation. There is no

doubt that they are concerned over the reduction of numbers of unionized employees.

Generally, the amount of litigation before the N.R.L.B. appears to be decreasing. This is partly the result of the current economic conditions faced in the United States but also, as expressed earlier, a recognition that the adversarial mode must change. There is no doubt that there is a strong bias today towards individual rights which, as in Canada, is forcing the union movement to carefully re-assess their positions and evaluate their structures. At the individual level there is increasing use of the courts in wrongful dismissal cases.

An example of what unions are facing in the United States can be appreciated when one considers what has taken place with the hiring hall structure. Because of anti-discrimination laws, union hiring halls must dispatch not only their registered union members but also non-union persons who have the demonstrated skills and are seeking work.

The United States industrial relations model is much as in Canada; we have borrowed from each other over the years. It is not uncommon to find private enterprise involved in the industrial relations community. There is no doubt that the United States Government realizes that it must, like Germany and Japan, become less involved in the bargaining process and place more emphasis on employers and unions settling their own disputes.

JAPAN

The Japanese industrial relations system is characterized by a strong commitment to productivity enhancement through collective bargaining and is not the result of cultural or long standing historical elements. In fact, the present system has a relatively short history, starting with the Trade Union Law of December, 1945 which was imposed on the Japanese by the Allied Command. This law approved and encouraged open and free activities of Labour Unions. During the period 1945 to 1975 major upheavals in industrial relations occurred. As a direct result of the debilitating effects on the economy during the Oil Crisis, job security through productivity enhancement became the foundation of labour management relations.

The strong commitment to productivity enhancement and collective bargaining provides for the central focus of the Japanese industrial relations system: that is, respect between and among all the participants.

This mutual respect is evident in the industrial relations system at all levels of society. The Japanese Constitution expressly guarantees to employees the right to organize, to bargain and to act collectively. Management and unions consciously avoid the use of the legalistic approach to their labour relations; rather, their desire is to reach a negotiated settlement. The use of replacement labour is seen as an admission of mutual defeat in collective bargaining and could poison the future relationship and, therefore, is virtually non-existent.

Flowing from this central focus of respect, three elements are evident: commonality of interest, consensus building and Round Table discussions, chaired by the Minister of Labour, at which management, labour, academia, the press and government are represented.

The commonality of interest of the parties ensures that responsibilities and actions are directed towards the common commitment to increased employment through productivity of the enterprise. A disciplined work ethic stems from the desire to achieve. It strengthens the individual employee's role in the enterprise and in effect makes the employee a stakeholder, and provides for mutual economic and social enhancement.

Employers have adopted strong labour relations techniques through extensive management training programs.

The notions of lifetime employment, seniority based wages and enterprise unions are referred to as the "Three Treasures of Japan".

Although a minority of Japanese employees are provided with lifetime employment, that objective is a desire of the majority of employees. Lifetime employment is not legislated nor contractual but is a practice developed after the Korean War and the massive employment needs that resulted. Not only the unionized but also the non-unionized sector functions under this practice. Small and medium enterprises by their very nature cannot give the same degree of security as large corporations. Employment means becoming a member of the community of a particular enterprise whether one is a blue or white collar employee as opposed to employment in a specific job or occupation.

Unions are organized on an enterprise by enterprise basis and may include blue or white collar employees, supervisors and lower and middle management. Approximately 29% of the workforce is unionized.

Economic circumstances are responded to by increasing or decreasing the number of temporary employees. Decisions on expanding or decreasing the workforce are matters for collective bargaining and are discussed extensively throughout the enterprise.

The wage system is essentially seniority-based, and is designed to increase wages every year according to the number of service years coupled with bonus-pay that may equal between 4-6 months regular salary. The minimum is the starting wage for new school graduates.

The "Three Treasures of Japan" have permitted employees to develop multi-skills and employers the opportunity to retrain and redeploy employees as economic circumstances demand. Since contract retirement is usually at age 55, the senior more highly paid employees are retired, with favourable terms to the employee, making way for less costly, more adaptable youth who are constantly brought into the enterprise. By directing the hiring practice towards a planned turn-over, with frequent additions of young employees, technological changes are easily accepted, and because there is the commitment to the community of the enterprise,

employees recommend and accept productivity enhancements. For example, robots introduced in the manufacturing process are not only accepted, with the employees retrained to service and program them, but are encouraged, since they are not viewed as a threat but as an enhancement of the productivity of the enterprise, mutually benefiting both employers and employees. Through understanding and acceptance of these Three Treasures, management, unions and employees have strengthened their commonality of interests and enhanced their mutual respect.

Consensus building throughout an enterprise stems from mutual respect and is based on a commitment to joint consultation. Grievances are predominantly resolved internally with procedures that are negotiated through collective bargaining, thereby minimizing outside third party intervention or resorting to a legalistic environment for dispute resolution. The enterprise union concept permits individual employees, both blue and white collar, to freely join the same union. Where a majority of employees are represented, the union can negotiate a union shop or closed shop clause in the collective agreement. The presence of both blue and white collar employees in the same union facilitates information exchange throughout the organization, strengthening the community of the enterprise and encouraging the participants to be valid stakeholders.

This consensus building through joint consultation and respect is readily apparent in the mutually pre-determined formula for bonus-pay. Since semi-annual bonus-pay is a significant component of the wage system, joint union-management goal setting and bonus distribution facilitates a common consensus. All participants share in the profits of the enterprise, and receive their share according to a formula that was agreed to in collective bargaining.

Throughout an enterprise Quality Control Circles are established. These forums for discussion between groups of employees and management operate outside of normal working hours, meet on a regular basis to identify any major problems, and develop solutions with an implementation plan. If the plan is implemented and proves successful the Quality Control Circle is rewarded. This shop floor forum provides for a free flow of information between management and employees and is seen as a significant aspect of the implementation plan and individual employee's contribution to productivity enhancement.

The commitment to productivity enhancement has fostered the development of formal institutions designed to develop consensus at the highest level of the nation. Mutually acknowledged and supported by unions, employer associations and government, these institutions provide each of the participants of the Round Table Conference with mutually acceptable economic facts from which a national consensus can be developed and fostered. These institutions, such as the Japan Productivity Centre established in 1954, or the Japan Institute of Labour, established in 1958, were originally conceived by government but are now largely sustained through non-government support. Unions and management through their federations also have made significant commitments to research so that their respective contributions to the Round Table are based on sound data and market economic principles.

The Round Table Conference or Sanrokon is composed of presidents, general secretaries or other top-level officers of the four main trade union federations, top business leaders from Japanese Federation of Employers Federations (Nikkeiren), Japan Federation of Economic Organizations (Keidanren), Japan Chamber of Commerce and Industry (Nissho), and representatives of the public interest from the press and academic circles. This conference which is a tripartite consultation meeting is held monthly and is chaired by the Minister of Labour and is attended at least once a year by the Prime Minister. It has achieved successful results as a place to exchange views and to promote communication among top leaders of government, labour and management and has assisted in setting the framework for the Spring Offensive when annual minimum industry wide increases are negotiated. The Spring Offensive or Shunto is the most important annual event for union management relations in Japan. Over 80% of unionized labour participates and the resultant increases affect wage determination for national and local public employees who are denied the right to bargain collectively. The wage negotiations that are concluded each spring set the base or minimum industry wide wage structure which is subsequently topped up through enterprise level union-management collective bargaining. The enterprise negotiations pre-determine the formula for the semi-annual bonus pay which directly relates to the profits of the enterprise during that period.

The role of government in the industrial relations equation has evolved over the years from a dominant role in 1945, when the Allied Command imposed unions as an attempt to democratize the nation, to one which can be

characterized as being passively influential. Government has been instrumental in establishing the framework for the industrial relations system; however over the last decade it has permitted the unions and management to bargain collectively without direct intervention. The main features of the system were introduced in direct response to practical problems that were faced. If the device worked well, it was maintained, if it did not, it was abandoned. Specific legislation on such topics as Labour Standards, Employment Standards, Equal Employment Opportunity for Women, Industrial Safety and Health have been enacted. The private sector industrial relations system has functioned under free collective bargaining. In general, the public sector unions are prohibited by statute from striking at all levels of the country, from the national level through to the municipal or local level.

The union structure in Japan is such that private sector unions internally determine what constitutes a mandate for industrial action, however, once a strike is imminent, then a strike notice to government is required. Industrial action (strikes) are usually disciplined affairs. Although the Trade Union Act provides unions with certain immunities during industrial action, violence could nullify these and expose the unions to civil damages before the Courts.

In conclusion, the Japanese industrial relations system is characterized by the adaptation of various foreign industrial relations concepts. Given this history, the notion that the system is a direct result of tradition and culture is not borne out by the facts. The commonality of interests has produced a respect for the principle that increased employment occurs through productivity, consultation and a fair distribution of profits. In Japan, labour is viewed as the integrating force in the contemporary economic equation of land, capital and technology. Through this respect of the responsibilities of labour unions and management, the objective of increased productivity has permitted the society as a whole to plan for change and to advance in concert. This successful labour-management cooperation is sustained in an environment where long-term rather than short-term solutions are considered, and where technological innovation is embraced.

AUSTRALIA

Australia is a federal state like Canada. Legislative competence in the field of labour relations is divided between federal and state governments under the Australian constitution. Other than in the two territories, the Federal government does not have the authority to directly legislate in regards to terms and conditions of employment. To maintain it's role the Federal government created the Australian Conciliation and Arbitration Commission to make decisions in respect of industrial disputes extending beyond state boundaries. Disputes within state boundaries are handled by state commissions. This jurisdictional limitation precludes development of national employment standards.

The structure of the Australian labour relations system remains fundamentally the same as that established under the Conciliation and Arbitration Act 1904. Minimum conditions of employment are established by arbitration commissions, either in response to dispute referrals from the parties, or on the initiative of the Commission. Awards usually cover the scope of issues referred by the parties, and are given under a set of principles and guidelines periodically established or revised by the commissions. Commissions are required to consider the existing economic environment when making decisions, but there are no guidelines regarding which factors are to be given greater consideration.

Since state governments do not face the constitutional limitations found at the federal level their commissions are more flexible. States have the residual authority to directly regulate terms and conditions of employment, enabling their commissions to make decisions beyond the specific matter referred by the parties. As well, legislation addressing more general labour standards such as termination, change and redundancy of employment, employee compensation, annual holidays and occupational health and safety is found at the state level.

Underlying the Australian system of third party intervention is the concept of comparative wage justice. Historically, the national preference for a wage determination mechanism has been linked to long term maintenance of consistent relationships between established occupational groupings, rather than unfettered operation of labour market supply and demand forces. The

highly structured wage determination system established in 1904 is in accord with these preferences.

In the absence of economic contests over terms and conditions of employment, work stoppages are traditionally short and most are linked to short term work site concerns. Fragmentation of trade unions also limits availability of resources for lengthy job action.

Only registered trade unions or employer organizations have access to established dispute resolution and wage determination machinery. Registrars of the commissions apply specified criteria in determining whether an organization is appropriate for registration. Level of employee support for the organization is not relevant to registration but does affect the nature of union security arrangements, and can affect the coverage of any award granted.

Awards are both industry and occupation based, depending on the nature of the organizations involved in the originating dispute. It is not unusual for a single employer to be subject to a number of different awards. The parties may apply to have an award varied at any time. Since awards are occupation or industry related, they apply regardless to the sale, lease, transfer or restructuring of a business.

The current labour relations system is being criticized for it's lack of effective enforcement provisions. It is alleged parties abide by awards only to the extent established conditions continue to meet their particular needs. The result is a degree of unrest not evident other than through discussions with the parties.

Legislation is based on the existence of trade unions, because only through a registered union may employees gain access to the arbitration and dispute resolution system. Trade union membership is 57% overall, with levels of 70% in the public sector and 40% in the private sector.

Trade unions are structured along craft lines. Although there is a large number of unions, membership tends to be concentrated in a few large unions. Jurisdictional disputes and restrictive work practices are ongoing major issues.

Union organizations are based primarily at the state or national level, with the Australian Congress of Trade Unions (A.C.T.U.) providing a national focus.

Through liberal interpretation of its enabling statute, and practices of the parties designed to give jurisdiction to the federal authority, the Australian Conciliation and Arbitration Commission has extended its influence to approximately sixty percent of the workforce. This influence is further extended through the flow-on or precedent setting nature of Federal Commission awards. The annual national wage case, which occurs pursuant to the 1983 Accord between the Government and the A.C.T.U. influences subsequent awards.

Where state and federal awards conflict or overlap the federal award is deemed to prevail. The extent to which awards apply to employees not members of a union is unclear in legislation. In practice, award provisions are usually extended by agreement of the parties.

Since awards establish minimums in specific areas, the parties retain the capacity to negotiate conditions beyond those specified, or in areas not covered by an award. Awards often contain specific provisions dealing with employee redundancy.

The parties are, however, modifying the system through a two tier wage system. The award operates as a minimum. Additional payments, and provisions with respect to items not covered in an award are dealt with on site, injecting elements of flexibility and turmoil not initially apparent. There is no indication any significant portion of these arrangements include payments related to individual productivity or enterprise profitability.

To support their activities before arbitration commissions, unions have developed research and analysis capabilities. Comparison of remuneration between relative occupational groups is especially important. Awards do not contain incentive payment systems.

Although a third party binding award is available, the majority of disputes referred to commissions are settled through mediation and conciliation. Commission procedures are very flexible and at both state and federal levels there is a strong emphasis on resolution without arbitration. In

most cases, the vast majority of issues originally in dispute have been resolved by the parties before the commission becomes involved, and those remaining are resolved through the mediation efforts of the commission.

The recommendations of the recently completed Hancock Inquiry into the Australian industrial relations system reveal no serious questioning of the underlying principles of the system. In recommending a new labour court and industrial relations commission, closer coordination of state and federal tribunals, strengthening of grievance procedures and greater reference to the public interest in tribunal deliberations, the report is clearly not questioning fundamentals of the existing system. One of its more far-reaching recommendations, allowing parties to negotiate and register their own agreements, represents only an acceptance of actual practice.

Much is occurring outside the system, making it difficult to assess whether perceived difficulties flow from the system or the practice of the parties. What is perceived as a respectable strike/lockout record, and the significant constitutional barriers to any changes requiring the redistribution of authority or structures are inhibiting change.

Operation of the system has also been affected by events at the national level. In February 1983 the present Labour government and the A.C.T.U. agreed on a prices and economic policy in Australia. This detailed and comprehensive Accord, in keeping with the principles of comparative wage justice, commits the government to policies which will redistribute income and maintain real wages through cost-of-living adjustments, implemented through the industrial tribunal system, in exchange for an A.C.T.U. commitment to limit wage demands. As well, the government commenced in April 1983, an annual National Tri-Partite Economic Summit Conference. The Conference is to provide a forum for discussion on prospective economic conditions, and if possible, general agreement on overall goals and targets. Assessments of the Summit's effectiveness vary widely. There is concern that failure to renew the Accord will result in a breakout of wage demands such as followed the last wage freeze.

The economic situation in Australia has deteriorated during the term of the Hancock Inquiry. Declining exports, foreign competition, a declining dollar and high interest rates are creating stress. Many are questioning the capacity of the parties to adapt within the existing industrial

relations system.

The Australian system does not encourage the development of sophisticated systems of communication or joint consultation, at the level of the enterprise. Fragmentation of employer and employee structures limits opportunities for broadly based consensus development. The continuing role of commissions limits the need to resolve matters through processes which recognize the specific shared interests of a particular employer employee relationship. Although the majority of issues are resolved by the parties, commissions remain as a readily available third party alternative when any impasse is reached.

NEW ZEALAND

In 1894, the introduction of the Industrial Conciliation and Arbitration Act set the basis for the industrial relations framework that exists in New Zealand today. This framework is now in the throes of change.

Government intervention to regulate industrial relations has an important bearing on the outcome of union and employer negotiations and ensuing relationships. This is especially true in New Zealand where many of the important processes which underpin negotiations have become matters of public policy.

The New Zealand industrial relations system is based on National Wage Awards and In House Agreements, and pivots on the registration of unions under the Industrial Relations Act of 1973. Registration in New Zealand should not be confused with registration in the construction industry in Alberta for they are vastly different.

Union registration in New Zealand is based on the principle that a union, independently of the employer, should acquire the sole right to represent an employee doing a particular job. The objectives of union registration are threefold. First, to promote the formation of independent trade unions. Second, to achieve some form of stability in union structure; and third, to contain a potentially serious form of conflict, arising from competition between unions for members. On the other hand, it has been stated that these objectives conflict with the principle that employees should be free to establish and/or join unions of their choice. The process of registration is essentially a matter between the applicant union and the Registrar of Unions. The union structure in New Zealand is based on craft awards.

Union membership is compulsory and is part of the overall structure which has been designed to achieve a wage fixing system coupled with wide spread application. Over the years, union membership has moved back and forth between voluntary and compulsory.

There are also employer unions, the main purpose of which is to co-ordinate an industry approach to the negotiation of the major awards. The employer union is cited by the employee union as the respondent party in the

conciliation proceedings for the negotiation of an award. This in effect extends the proceedings to all the employers in the industry.

The registered union exercises its right to represent employees through the negotiation of awards and agreements. An award by its nature,is an agreement covering hundreds of workplaces, and cannot settle all the outstanding issues relevant to individual workplaces. The award system in no way prevents the negotiation of second tier agreements, indeed second tier negotiations are an important feature of the system. The union has two avenues it can follow when seeking to negotiate improved wages and working conditions. It can initiate conciliation proceedings for the procurement of an award or it can agree with the employer to negotiate a voluntary settlement of the dispute leading to the registration of a collective agreement.

The procedure for negotiating an award can encompass conciliation proceedings. In New Zealand conciliation is compulsory and reinforces the union's right to negotiate on behalf of the employees it represents. The first step in resolving the dispute can be through an independent conciliator. Failing this, the court as an arbitrator may be involved, but only if both parties agree. If both parties do not agree to go to the court, the court, as a body which presides over the conciliation and arbitration process, can determine after discussion with the parties, the most appropriate procedure for dealing with the dispute. While the dispute is within this system the parties must refrain from striking or locking out.

The conciliation service has existed since 1894, whereas the mediation service was introduced in 1970 to operate in a less formal way. The mediation service, among other things, was introduced to provide a preventive element into the disputes resolution system. Since 1970, mediators have assumed a substantial role in servicing the grievance procedures. In addition to the preventive role, mediators have the right to arbitrate on any matter in a dispute if requested by the parties. There is a degree of overlap between mediators and conciliators. Mediators have a role in interest disputes, both in terms of formally assisting the parties in voluntary collective agreement negotiations, and when required to do so in mediating awards negotiations which have broken down. Conciliators may perform the same role as mediators.

An award prescribes legally binding minimum wages and working conditions for the employees it covers. It is by law industry wide, unless the parties otherwise agree. The award continues until superseded by another award or cancelled by the court if it is not renewed within 3 years. In short, the award system fixes minimum standards on a job-by-job basis with the result that there is considerable variation.

The principle that awards set a minimum standard across an entire industry has given rise in some cases, to second tier agreements which can establish more favourable terms than the award. While an award must be registered to be legally binding, second tier agreements are not always registered.

The right to strike or lockout is limited to minimize industrial action and its effect on the availability of goods and services. It is unlawful to strike when a dispute is within the conciliation process; when the dispute involves the grievance procedure; when the dispute is a non-industrial matter; when employees fail to comply with a resumption to work order of the Arbitration Court; and when the 14 days advance notice of a strike in an essential industry or 3 days in an export slaughterhouse is not given.

Present legislation does not require a strike ballot; however, unions by practice have pre-strike secret ballot provisions written into their rules. In 1973, legislation moved away from pre-strike ballots to ballots on a resumption of work.

Unions support the political process through affiliation with the political party of their choice.

In the matter of demarcation disputes, the Industrial Relations Act provides a procedure to resolve a question as to the right of employees in specified crafts, to do certain work in an industry or industries to the exclusion of the employees in other crafts.

The court has determined in demarcation disputes that the work being undertaken by the employee determines the union to which that person will belong. This is consistent with the principles of union registration and membership in New Zealand. Where two unions have coverage the courts in some cases have ruled that it cannot award exclusive coverage to either union.

There are two Acts which set the minimum standards for non-unionized employees, The Minimum Wage Act 1945 and the Holidays Act 1981. In the case of The Minimum Wage Act, any orders are limited to employees 20 years of age and older.

The Arbitration Court is central to the system of industrial relations in New Zealand. This Court has twin roles, enforcement and dispute settlement. The Arbitration Court is a lay court and relies heavily on its nominated members. It is charged with the responsibility to make decisions in equity and good conscience. Lawyers are permitted to appear before the Court in rights arbitration proceedings, but can only participate in interest disputes with the consent of the parties.

A system of providing education leave to train union representatives and supervisory personnel is found throughout New Zealand. They are taught how to negotiate; how to develop wage levels; how to properly handle grievances, and how conciliation, mediation and the arbitration court function.

The current government in New Zealand has recognized a need for change in the area of industrial relations because of the competitive environment as levels of protection are lowered and removed. This in turn, is having a major effect on the behaviour of employees and employers and as a result the government during the coming year may introduce a number of changes based on the following strategies and objectives as outlined in the policy paper of late September 1986:

To encourage the development of effective union and employer organizations which

(i) can operate independently of legislative support,

(ii) can negotiate relevant awards and agreement that are adhered to, and;

(iii) each person's employment should be regulated by a single, comprehensive agreement which is freely negotiated, administered and enforced by the parties.

CONCLUDING REMARKS

Industrial relations is people. It is people who employ and people who work. The framework within which that relationship is established is a responsiblity of government. Fairness and equity are the basic elements of a level playing field where both parties have every opportunity to reach mutually acceptable agreements.

In this report the Committee has provided a summary outlining the most important characteristics of several different labour relation systems. The Committee anticipates that this summary, and the questions, will stimulate fruitful discussions focused on the fundamental underpinnings of Alberta's labour relations system.

Over the next few weeks the Committee will be listening to Albertans express their views on their labour relations system. The Committee encourages you to consider carefully this report and looks forward to receiving your comments and suggestions.

Below, are listed a series of questions which we ask that you take time to answer as fully as possible.

These questions are not recommendations of the Committee and should not be considered as such.

Recommendations will be developed only after we have had an opportunity to listen to you, as well as other Albertans who will be making presentations to the Committee over the next number of weeks.

Your answers can be in writing, or you may wish to verbally state them during your presentation to the Committee. Written submissions should be forwarded to:

Mr. John Szumlas, Secretary
Labour Legislation Review Committee
420 Legislature Building
Edmonton, Alberta
T5K 2B6

Upon the conclusion of the Public Meeting stage, a final report containing a number of recomendations will be issued.

QUESTIONS

1. Other industrial relations systems provide for a high degree of recognition of employee - employer equality and respect.

   DO WE WISH TO AIM FOR THIS IN ALBERTA?

   IF SO, HOW CAN IT BE ACHIEVED?

2. Other industrial relations systems provide for a high degree of Free Collective Bargaining.

   DO WE HAVE FREE COLLECTIVE BARGAINING IN ALBERTA?

   IF NOT, WHAT CHANGES WOULD BE NECESSARY TO ACHIEVE IT?

3. Other industrial relations systems permit bargaining to be done collectively and individually.

   IN ALBERTA, ARE THE INDIVIDUAL'S RIGHTS TO BARGAIN ADEQUATELY PROTECTED?

   IF NOT, WHAT SHOULD BE DONE?

4. Other industrial relations systems provide for strong communication which are necessary to a good relationship.

   ARE THERE RESTRICTIONS TO THIS PROCESS IN ALBERTA?

   HOW CAN IMPROVEMENTS BE ACHIEVED?

5. Other industrial relations systems have achieved a commonality of socio-economic interest of government, union and employer groups through a high degree of respect and communication between and among the three parties.

IS THIS LACKING IN ALBERTA?

IF SO, WHAT CAN BE DONE TO IMPROVE IT?

6. Other industrial relations systems provide for a formal mechanism whereby senior representatives from union federations, employer federations and government meet on a monthly basis to deepen their mutual understanding of their respective responsibilities.

IN ALBERTA, DO YOU SEE A NEED FOR A SIMILAR FORUM?

IF SO, HOW DO YOU SEE IT CONSTITUTED?

7. Other industrial relations systems provide for a high degree of multiple level consensus development, involving employees and employers, unions and management.

DO YOU THINK THAT IT IS VALUABLE TO DEVELOP MUTUAL UNDERSTANDING THROUGHOUT AN ORGANIZATION?

IF SO, HOW DO YOU THINK THIS CAN BE ACHIEVED?

8. Other industrial relations systems provide for a strong commitment to increasing productivity, and base a significant part of their wage structure on how successfully the enterprise increases it's productivity.

IN ALBERTA, DO YOU THINK THAT PRODUCTIVITY SHOULD BE A CENTRAL FOCUS OF THE INDUSTRIAL RELATIONS SYSTEM?

IF SO, HOW CAN THIS BE ACHIEVED?

9. Some industrial relations systems legislate the use of Compulsory Binding Third Party Arbitration in private sector disputes, while others do not.

WHAT SHOULD BE DONE IN ALBERTA?

10. None of the foreign jurisdictions have separate industrial relations legislation for the Construction Industry although its unique nature was universally acknowledged.

SHOULD ALBERTA INTRODUCE A SEPARATE STATUTE FOR THE CONSTRUCTION INDUSTRY?

11. Other jurisdictions vary in their use of a legalistic approach to industrial relations.

IS THE INDUSTRIAL RELATIONS SYSTEM IN ALBERTA BECOMING TOO LEGALISTIC?

IF SO, WHAT CAN BE DONE?

12. Other jurisdictions strongly emphasize the education of union and management personnel in the workings of the industrial relations system.

WOULD INCREASED CONCENTRATION ON THIS AREA BE BENEFICIAL IN ALBERTA?

IF SO, HOW SHOULD IT BE DELIVERED?

13. Other industrial relations systems provide for effective preventative conciliation and mediation services.

DO YOU THINK THE SYSTEM IN ALBERTA ADEQUATELY MEETS THE NEEDS OF THE LABOUR RELATIONS COMMUNITY?

IF NOT, WHAT WOULD YOU SUGGEST BE DONE TO IMPROVE THE SYSTEM?

14. Other industrial relations systems have varying degrees of Government involvement in the collective bargaining process.

IN ALBERTA, IS THE GOVERNMENT TOO INVOLVED IN THE PROCESS?

IF SO, HOW CAN ITS ROLE BE DECREASED?